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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JUWEIYA ABDIAZIZ ALI, et al.,

CASE NO. C17-0135JLR

11 Plaintiffs,

ORDER GRANTING MOTION
12 v.
13 DONALD TRUMP, et al.,
14 Defendants.

FOR STAY

15 **I. INTRODUCTION**

16 Before the court is Defendants' motion to stay these proceeding pending
17 resolution of the appeal of the preliminary injunction in *Hawaii v. Trump*, No. CV
18 17-00050 (D. Haw.). (Mot. (Dkt. # 85)); *see also Hawaii v. Trump*, No. 17-15589 (9th
19 Cir.). The court has considered Defendants' motion, Plaintiffs' opposition to the motion
20 (Resp. (Dkt. # 92)), Defendants' reply (Reply (Dkt. # 93)), the relevant portions of the

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1 record, and the applicable law. Being fully advised,¹ the court GRANTS Defendants'
2 motion.

3 **II. BACKGROUND**

4 This lawsuit arises out of President Donald J. Trump's recent issuance of two
5 Executive Orders on immigration: Executive Order No. 13,769 ("EO1") and Executive
6 Order No. 13,780 ("EO2").² On January 30, 2017, Plaintiffs filed a putative class action
7 complaint challenging Section 3 of EO1. (Compl. (Dkt. # 1).) On March 6, 2017,
8 President Trump issued EO2, which expressly revoked EO1. *See* EO2 ¶ 13. Following
9 the President's issuance of EO2, Plaintiffs filed an amended complaint incorporating new
10 allegations and claims with respect to EO2. (FAC (Dkt. # 52).) On March 10, 2017,
11 Plaintiffs filed a motion seeking a temporary restraining order ("TRO") against
12 enforcement of certain provisions of EO2, including Section 2(c). (TRO Mot. (Dkt.
13 # 53).) On March 15, 2017, the court held a hearing on Plaintiffs' motion for a TRO.
14 (Min. Entry (Dkt. # 78).)

15 Later that day, in a separate suit, the federal district court in Hawaii enjoined the
16 enforcement of Sections 2 and 6 of EO2. *See Hawaii v. Trump*, No. CV 17-00050 (D.
17 Haw.), Dkt. ## 219-20. On March 17, 2017, this court stayed Plaintiffs' motion for a
18 TRO in part because the federal district court in Hawaii entered a nationwide injunction
19 that provided Plaintiffs with the relief they sought. (3/17/17 Order (Dkt. # 79).) The

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21 ¹ No party has requested oral argument, and the court determines that oral argument is not
necessary for its disposition of this motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

22 ² EO2 expressly revoked EO1 effective March 16, 2017. *See* EO2 § 13.

1 court also noted that “the Ninth Circuit’s rulings on EO2 in *Hawaii v. Trump* will likely
2 have significant relevance to—and potentially control—the court’s subsequent ruling
3 here.” (*Id.* at 10.) Accordingly, the court concluded that “granting a stay of Plaintiffs’
4 TRO motion while the nationwide injunction remains in place . . . pending the outcome
5 of appellate proceedings in [the Hawaii] case would facilitate the orderly course of
6 justice.” (*Id.*)

7 Defendants now seek a stay—not just of Plaintiffs’ motion for a TRO—but of the
8 entire case pending resolution of the appeal in *Hawaii v. Trump*. (See Mot.) Plaintiffs
9 oppose a stay. (See Resp.) The court now considers Defendants’ motion.

10 **III. ANALYSIS**

11 The court “has broad discretion to stay proceedings as an incident to its power to
12 control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v.*
13 *N. Am. Co.*, 299 U.S. 248, 254 (1936). This power applies “especially in cases of
14 extraordinary public moment,” when “a plaintiff may be required to submit to delay not
15 immoderate in extent and not oppressive in its consequences if the public welfare or
16 convenience will thereby be promoted.” *Clinton*, 520 U.S. at 707. In determining
17 whether to grant a motion to stay, “the competing interests which will be affected by the
18 granting or refusal to grant a stay must be weighed.” *Lockyer v. Mirant Corp.*, 398 F.3d
19 1098, 1110 (9th Cir. 2005) (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
20 1962)). Those interests include: (1) “the possible damage which may result from the
21 granting of a stay,” (2) “the hardship or inequity which a party may suffer in being
22 required to go forward,” and (3) “the orderly course of justice measured in terms of the

1 simplifying or complicating of issues, proof, and questions of law which could be
2 expected to result from a stay.” *Id.* Here, the court finds that these factors weigh in favor
3 of granting Defendants’ motion pending resolution of the appeal of the preliminary
4 injunction in *Hawaii v. Trump*.

5 **A. The Orderly Course of Justice**

6 The court begins with the last factor—the orderly course of justice and judicial
7 economy. District courts often stay proceedings where resolution of an appeal in another
8 matter is likely to provide guidance to the court in deciding issues before it. *See Landis*,
9 299 U.S. at 254. When considering a stay pending the resolution of another action, the
10 court need not find that the two cases involve identical issues; a finding that the issues are
11 substantially similar is sufficient to support a stay. *See Landis*, 299 U.S. at 254; *see also*
12 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (stating
13 that the court’s authority to stay one proceeding pending the outcome in another “does
14 not require that the issues in such proceedings are necessarily controlling of the action
15 before the court”). Here, the appeal in *Hawaii v. Trump* involves many issues that
16 overlap with the present litigation. Indeed, both cases involve constitutional and statutory
17 challenges to Sections 2 of EO2. (*See* FAC ¶ 98; *id.* at 45 (Prayer for Relief); Prop. TRO
18 (Dkt. # 53-1) at 2 (seeking an injunction of Section 2 of EO2); *Hawaii v. Trump*, No. CV
19 17-00050 DKW-KSC, 2017 WL 1011673, at *17 (D. Haw. Mar. 15, 2017) (issuing a
20 nationwide TRO regarding Sections 2 and 6 of EO2).

21 Defendants argue that waiting for the Ninth Circuit’s decision in the *Hawaii* case
22 will likely provide guidance to the court in resolving discovery disputes relevant to

1 Plaintiffs' claims. (Mot. at 7-8.) First, Defendants argue that Plaintiffs are seeking
2 internal government records that Defendants do not believe are relevant because under
3 *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972), Defendants need only demonstrate a
4 "facially legitimate and bona fide reason" for the Executive's exclusion of aliens. (Mot.
5 at 6.) Plaintiffs contend that the Ninth Circuit has already resolved the issue of whether
6 internal government documents are relevant to Plaintiffs' claims when it rejected
7 application of the *Mandel* standard in *Washington v. Trump*, 847 F.3d 1151, 1162 (9th
8 Cir. 2017). (Resp. at 3 n.4.) However, in the *Hawaii* appeal, Defendants argue that the
9 federal district court in *Hawaii* misread the Ninth Circuit's stay ruling in *Washington*.
10 (See Mot. at 1 (citing appellants' brief).) Plaintiffs disagree with this position, but the
11 salient point for purposes of Defendants' stay motion is that resolution of the *Hawaii*
12 appeal is likely to provide guidance to this court on that issue.

13 Further, even if the Ninth Circuit determines in *Hawaii* that *Mandel* does not
14 provide the applicable standard and that courts may look beyond the four corners of EO2,
15 the Ninth Circuit's decision is likely to provide guidance on the scope of that review.
16 Although the Ninth Circuit is not considering discovery issues on appeal, it is likely to
17 decide legal issues that will impact the court's resolution of the parties' discovery
18 disputes here by clarifying "the applicable law or relevant landscape of facts that need to
19 be developed."³ See *Washington v. Trump*, No. C17-0141JLR, 2017 WL 1050354, at *5

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22 ³ Plaintiffs also argue that Defendants' motion for a stay is actually a pretext for
Defendants' categorical opposition to producing any discovery at all. (See Resp. at 5-6.)
Defendants take the position that limited, if any, discovery is permitted on Plaintiffs' claims.
(See Mot. at 7 ("Defendants do not believe these [internal government] records are relevant to

1 (W.D. Wash. Mar. 17, 2017) (quoting *Hawaii v. Trump*, No. CV 17-00050 DKW-KJM,
2 2017 WL 536826, at *5 (D. Haw. Feb. 9, 2017)).

3 In addition, Defendants argue that the Ninth Circuit’s ruling in *Hawaii v. Trump*
4 will assist the court in other aspects of the litigation as well. (Mot. at 8.) For example,
5 Defendants have moved for dismissal under Federal Rules of Civil Procedure 12(b)(1)
6 and 12(b)(6) (*see* MTD (Dkt. # 94)) and Plaintiffs have moved for class certification
7 (MFCC (Dkt. # 58)).⁴ For the same reasons that the Ninth Circuit’s decision in *Hawaii*
8 would be helpful in resolving Plaintiffs’ TRO motion, *see Ali v. Trump*, No. C17-
9 0135JLR, 2017 WL 1057645, at *5 (W.D. Wash. Mar. 17, 2017), the Ninth Circuit’s
10 decision is also likely to be helpful to the court in resolving Defendants’ motion to
11 dismiss and Plaintiffs’ motion for class certification. Further, failing to stay this case
12 could result in “inconsistent rulings” that would need to be “disentangle[d]” later.
13 *Washington*, 2017 WL 1050354, at *5. For example, if the court determined that
14 discovery of internal government documents is relevant to Plaintiffs’ claims and
15 proportional to the needs of the case, *see* Fed. R. Civ. P. 26(b)(1), but the Ninth Circuit’s
16 decision is inconsistent with that ruling, then the parties would have wasted resources on
17 irrelevant discovery, and the court may have wasted time and resources on irrelevant

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19 Plaintiffs’ claims because, under the applicable law, Defendants need only demonstrate a
20 “facially legitimate and bona fide reason” for the Executive’s exclusion of foreign nationals.”
21 (citing *Mandel*, 408 U.S. at 770 and *Fiallo v. Bell*, 430 U.S. 787, 792-96 (1977).) Defendants
22 ground their discovery argument in case law, and although the court does not consider the merits
of that issue now, the court does not view Defendants’ argument for a stay as a pretext to avoid
discovery.

⁴ The court previously stayed consideration of Plaintiffs’ motion for class certification until after the Ninth Circuit’s ruling in *Hawaii v. Trump*. (4/5/17 Order (Dkt. # 91) at 3.)

1 discovery disputes over those materials. In short, the Ninth Circuit’s decision could
2 change “the applicable law or the relevant landscape of facts that need to be developed”
3 in such a way that this court’s intervening rulings would be nullified or need to be
4 reconsidered. *See Washington*, 2017 WL 1050354, at *5.

5 Finally, Plaintiffs argue that the issues in the two cases are not perfectly matched
6 and that the Ninth Circuit’s resolution of the appeal in *Hawaii* will leave various issues
7 unresolved before this court. (*See* Resp. at 3-4.) Resolution of the *Hawaii* appeal,
8 however, need not “settle every question of . . . law” to justify a stay. *Landis*, 299 U.S. at
9 256. It is sufficient that the *Hawaii* appeal is likely to “settle many” issues and
10 “simplify” others, *id.*, such that a stay will facilitate the orderly course of justice and
11 conserve resources for both the court and the parties. *See Fairview Hosp. v. Leavitt*,
12 No. 05-1065RWR, 2007 WL 1521233, at *3 n.7 (D.D.C. May 22, 2007) (granting a stay
13 pending the resolution of another matter that would likely settle or simply issues even
14 though it “would not foreclose the necessity of litigation in [the stayed] case”); *In re*
15 *Literary Works in Elec. Databases Copyright Litig.*, No. 00 CIV 6049, 2001 WL 204212,
16 at *3 (S.D.N.Y. Mar. 1, 2001) (same). The court concludes that a stay, therefore, is most
17 “efficient for [the court’s] own docket and the fairest course for the parties.” *Leyva*, 593
18 F.2d at 863. Accordingly, this factor weighs in favor of granting Defendants’ motion.

19 **B. Possible Damage to Plaintiffs if a Stay is Imposed**

20 Plaintiffs assert that a stay will delay resolution of discovery disputes that
21 Defendants already concede will arise in any event and necessarily delay the overall
22 resolution of the case. (Resp. at 6-7.) The court is unconvinced that Defendants’

1 proposed stay will necessarily delay the ultimate outcome of this case. As noted
2 previously, both the present case and the appeal in *Hawaii v. Trump* involve challenges to
3 Section 2 of EO2. Given this similarity, if the court were to proceed with the parties'
4 potential discovery disputes here, there is a fair possibility—irrespective of how the
5 Ninth Circuit resolves the *Hawaii v. Trump* appeal—that this court's rulings would be out
6 of sync with the latest controlling authority once the Ninth Circuit issues its decision. At
7 that point, the parties would likely seek reconsideration, and the court would be faced
8 with deciding the same issues a second time. Thus, contrary to Plaintiffs' assertions,
9 denying a stay will not necessarily resolve the litigation more quickly.

10 Plaintiffs also express concern about the potential length of any stay. The court is
11 sensitive to this concern but notes that the Ninth Circuit ordered expedited briefing in the
12 *Hawaii* appeal and conducted oral argument on May 15, 2017. See *Hawaii v. Trump*, No.
13 17-15589 (9th Cir.), Dkt. ## 14, 18. Plaintiffs also raise the concern that the stay may
14 continue through an appeal to the United States Supreme Court. (Resp. at 7.) Although
15 that may be accurate, litigation is inherently uncertain and the *Hawaii* litigation could end
16 prior to reaching the United States Supreme Court. Further, the court will require the
17 parties to submit a joint status report within 10 days of the Ninth Circuit's ruling in the
18 *Hawaii* appeal so that the court can reassess the continued appropriateness of the stay at
19 that time. Due to the expedited nature of the appeal before the Ninth Circuit, the court
20 finds that the potential harm to Plaintiffs is insufficient to warrant denying Defendants'
21 motion.

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1 **C. Possible Hardship or Inequity to Defendants if a Stay is Not Imposed**

2 Defendants assert that, in the absence of a stay pending further guidance from the
3 Ninth Circuit, they will endure hardship due to “[t]he sheer volume of discovery” that
4 Plaintiffs anticipate serving on Defendants. (Mot. at 9.) Plaintiffs respond that it is well
5 established that “being required to defend a suit, without more, does not constitute a
6 ‘clear case of hardship or inequity.’” (Resp. at 7 (quoting *Lockyer*, 398 F.3d at 1112 and
7 *Landis*, 299 U.S. at 255).)

8 However, neither this lawsuit nor the discovery Plaintiffs seek is typical. The
9 Supreme Court has declared that “the high respect that is owed to the office of the Chief
10 Executive . . . is a matter that should inform the conduct of the entire proceeding,
11 including the timing and scope of discovery, . . . and the Executive’s constitutional
12 responsibilities and status are factors counseling judicial deference and restraint in the
13 conduct of litigation against it.” *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 385
14 (2004) (alterations and internal citations omitted). Plaintiffs’ anticipated discovery
15 requests are likely to raise multiple discovery disputes. (*See* JSR at 2-4, 6 (relevance
16 objections), 7 (privilege issues).) In the context of this case, the “high respect” owed to
17 the Executive warrants a stay that will protect Defendants from the burden of
18 resource-intensive discovery while the Ninth Circuit addresses issues that will likely
19 inform the appropriateness, scope, and necessity of that discovery. *See id.; see also*
20 *Clinton*, 520 U.S. at 707 (stating that the power to stay proceedings applies “especially in
21 cases of extraordinary public moment”). Thus, the court concludes that this factor

1 weighs heavily in favor of granting Defendants' motion for a stay pending the outcome of
2 the appeal in *Hawaii v. Trump*.

3 **D. Summary of the Factors**

4 The court's evaluation of the relevant factors weighs in favor of staying these
5 proceedings pending the resolution of the appeal in *Hawaii v. Trump*. Awaiting the Ninth
6 Circuit's opinion in that case will promote the orderly course of justice and judicial
7 economy. In addition, Defendants have demonstrated they face hardship or inequity in
8 the absence of a stay in light of the breadth of Plaintiffs' anticipated discovery and the
9 unique nature of this case involving the Chief Executive. *Clinton*, 520 U.S. at 707;
10 *Cheney*, 542 U.S. at 385. The appeal's fast track mitigates any harm to Plaintiffs.
11 Indeed, the Ninth Circuit has already conducted oral argument. Accordingly, the stay is
12 likely to be of short duration. Further, denying the stay will not necessarily move this
13 litigation along faster because the court may then need to revisit any rulings it makes in
14 the absence of a stay following the Ninth Circuit's decision. Finally, the court orders the
15 parties to file a joint status report within 10 days of the Ninth Circuit's ruling so that the
16 court may evaluate the continued appropriateness of any stay at that time.

17 **IV. CONCLUSION**

18 Based on the foregoing analysis, the court GRANTS Defendants' motion for a
19 stay in these proceedings (Dkt. # 85) pending the Ninth Circuit's resolution of the appeal
20 in *Hawaii v. Trump*. Should circumstances change such that lifting the stay is warranted,
21 any party may move to lift the stay. In addition, the court ORDERS the parties to file a
22 joint status report within 10 days of the Ninth Circuit's ruling in *Hawaii v. Trump* so that

1 the court may reevaluate the stay at that time. Because this action is now stayed, the
2 court DIRECTS the Clerk to remove the pending motions (Dkt. ## 58, 94) from the
3 court's calendar. After the stay is lifted, the parties may refile these motions for the
4 court's consideration if appropriate at that time.

5 Dated this 22nd day of May, 2017.

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JAMES L. ROBART
United States District Judge